

REMARKS

The Examiner reasserts a single rejection that Claims 1-3 are rejected under 35 USC § 103(a) as allegedly being unpatentable over Quessy et al., United States Patent Application Publication No. 2002/0147196 in view of Guay, D. Am J Geriatric Pharmacotherapy 1:18-37 (September 2003)¹.

I. **Guay Is Not Prior Art**

The Examiner erroneously responds to the Applicants' evidence that Guay et al. is not prior art by stating that:

The reference was **clearly available to the public before the instant invention was filed because it was published on September of 2003.**
Office Action pg 3 [emphasis in original]. The Examiner apparently believes that the printing date appearing on the journal (i.e., September 2003) represents when the journal is publicly available (i.e., published). This is not correct:

In using declassified material as references there are usually two pertinent dates to be considered, namely, the printing date and the publication date. The printing date in some instances will appear on the material and may be considered as that date when the material was prepared for limited distribution. The publication date is the date of release when the material was made available to the public.
MPEP § 707.05(f) "Effective Dates of Declassified Printed Matter"; and Ex parte Harris, 79 USPQ 439 (Comm'r Pat. 1948). The Examiner is failing to understand that (if sent to libraries) the publisher must pack and ship the journals (this may take several months). Consequently, journals available in hard copies at libraries are routinely documented as "publicly available" by a library's date of receipt (i.e., publication date) and not the publisher's date of issue (i.e., printing date):

A publication disseminated by mail is not prior art until it is received by at least one member of the public. Thus, a magazine or technical journal is effective as of its date of publication (date when first person receives it) not the date it was mailed or sent to the publisher.
MPEP § 2128.02 "Date Publication Is Available as a Reference"; and In re Schlittler, 234 F.2d 882, 110 USPQ 304 (CCPA 1956). The Applicants properly provided evidence in the last Office Action response regarding the Elsevier's "Science Direct" on-line publication date of November 6, 2003 for Guay et al.

¹ The Applicants herein incorporated by reference all arguments made in the previous response.

Prior art disclosures on the Internet or on an online database are considered to be publicly available as of the date the item was publicly posted. If the publication does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b), although it may be relied upon to provide evidence regarding the state of the art.

MPEP § 2128 "Printed Publications" as Prior Art/ ELECTRONIC PUBLICATIONS AS PRIOR ART [emphasis added]. This date is after the Applicant's filing date (October 30, 2003) and the Examiner has not provided any evidence to the contrary.

The Applicants, therefore, respectfully request that the Examiner withdraw Guay as a cited reference.

II. Claims 1-3 Are Not Obvious

Furthermore, the fact that Guay is not prior art also moots the pending 35 USC 103(a) rejection because the Examiner admits that Quessy et al. does not teach a composition comprising a combination of oxcarbazepine and bupropion:

Quessy et al. do not expressly illustrate an example of the composition comprising bupropion and oxcarbazepine ...

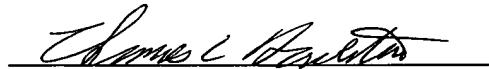
Office Action pg. 3. Further, Guay does not teach drug combinations of any type. Consequently, a drug combination comprising oxcarbazepine and bupropion is not taught by Quessy et al. and Guay.²

² The Applicants believe that the Quessy et al./Guay combination does not contain a proper motivation to modify the art for creating the claimed embodiment, and reserve the right to enter such an argument.

CONCLUSION

The Applicants believe that the arguments and claim amendments set forth above traverse the Examiner's rejections and, therefore, request that all grounds for rejection be withdrawn for the reasons set above. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned collect at 617.984.0616.

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